

Madame Chairwoman, Senators and staff, my name is Matt Woodruff. First of all, I want to thank you for the opportunity to appear today and present the views of The American Waterways Operators (AWO) and those of Coastal Towing, Inc., an AWO member company from Houston, Texas. The Texas Waterways Operators Association also joins in AWO's position on COGSA.

I am a partner in the Houston law firm of Eastham, Watson, Dale and Forney, LLP, one of the oldest maritime law firms on the Texas coast. I joined the firm in 1984 and represented a number of marine transportation companies and their underwriters, focusing especially on the U.S. inland and coastal fleets. In 1992, I left the firm and joined Coastal Towing, where I served as Vice President and General Counsel. Coastal Towing operates over 100 barges and 30 towboats on the Gulf Intracoastal Waterway and the Western Rivers of the United States, essentially the Mississippi River and its tributaries. Coastal Towing is the largest inland transporter of residual oils and feedstock in the United States. During my time at Coastal, I became active in industry affairs, including the Texas Waterways Operators Association, of which I am immediate past President, and The American Waterways Operators, of which I became a member of the Board of Directors in 1997. I returned to the law firm on January 1<sup>st</sup> of this year, but I continue to serve as Counsel to Coastal Towing and represent it on the AWO Board.

I would like to present just a few additional facts to put my testimony on COGSA into perspective. AWO is the national trade association of the inland and coastal tugboat, towboat and barge industry. This industry:

- Is the largest component of the U.S. flag fleet. We operate over 6000 tugboats and towboats and over 30,000 barges. We directly employ on our vessels alone over 33,000 people and carry 15% of the country's inter-city freight. In 1996, that accounted for over 622 million tons of cargo.
- While we mainly move bulk cargoes, like coal, petroleum, farm products and chemicals, we also move general cargoes ranging from steel coils to rocket parts.
- We operate on over 26,000 miles of waterways across America and on every coast. To give you a sense of the geographic diversity of our industry, even though Coastal Towing is based in Houston, its vessels operate from Texas to Alabama along the Gulf and as far as Kansas City, Minneapolis, Chicago and Pittsburgh on the rivers. It has full time shore based employees in Texas, Louisiana, Kentucky, Illinois and Missouri. Coastal's vessel crews live across the Gulf Coast and throughout the Midwest.

In sum, AWO's members are the foundation of today's U.S. flag merchant fleet. We are also safe and efficient. We move 15% of the nation's cargo for only 2% of the nation's freight cost. We have fewer polluting emissions and accidents

per ton mile than our competing modes of rail and truck transportation.

Having said who we are, our message today is simple:

There is nothing wrong with COGSA that justifies a total overhaul of the Act. The current arrangement serves the needs of our industry well. To the extent other interests may show that justice requires changes to specific sections of COGSA, these amendments should be considered. But, these individual problems should not be used as an excuse to rewrite the entire law.

Although some may say that COGSA does not affect the inland and coastal operators who make up AWO, this is not true. Even though the current Act does not apply directly to inland and coastwise trade, its terms have been incorporated by reference into many contracts for the domestic transportation of bulk materials. Most inland and coastal marine transportation involves bulk commodities. Many domestic shippers and carriers of bulk cargo elect to incorporate COGSA by reference because it is a predictable, fair, established means of allocating the risk of loss of cargo between the carrier and shipper and their insurance companies. Others elect not to incorporate COGSA's terms and instead reach their own agreements as to allocation of risk for cargo loss.

Both the AWO members who incorporate COGSA and those who do not have voiced opposition to the concept of a COGSA overhaul. Those who incorporate COGSA oppose change because it will upset traditional relationships that serve them well. Those who do not are concerned that the expansive definitions of some proposals will extend the Act's coverage to movements never before within the realm of COGSA, thus limiting their ability to negotiate as they wish. Even harbor tug operators are concerned that they will become carriers under COGSA simply by assisting a ship into its berth. All our members, regardless of their view on the Act, seem to agree that the principal effect of an overhaul would be to keep maritime cargo lawyers occupied well into the next millennium, establishing the new body of case law needed to clarify the limits of each new provision.

Our current system of COGSA utilization provides a predictable basis for setting freight rates and insurance premiums. For carriers and shippers buying and selling transportation on the spot market, a significant change to COGSA will create a period of uncertainty and increased costs as underwriters and carriers adjust rates. The effect will be more profound on those with long-term transportation contracts, where rates were set in anticipation of the application of the current liability scheme. These parties may find themselves with differing liabilities and no mechanism to adjust their rates to account for them.

The consumer eventually pays for both the carrier and shipper's insurance premiums and the transactional costs associated with claims. If COGSA is radically altered, the consumer will bear the increased transactional costs associated with revising rates structures and perhaps most significantly, the legal fees that will be incurred by all concerned as they struggle to define the bounds of the new act.

In sum, there is no reason to radically alter the commercial landscape of the domestic tugboat and towboat industry in order to correct problems other segments of the industry perceive with specific provisions of the current Act. Justice will be best served by applying tailored changes to specific problems. We believe the committee should question critically the need for this comprehensive overhaul and carefully consider what those who recommend the overhaul stand to gain thereby. This proposal fails under that scrutiny.

Thank you for your consideration. I would be pleased to answer any questions you have.